

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

ROBERT CECIL BOOKER,

Plaintiff,

v.

CIVIL ACTION NO. 2:05-cv-00002

SGT. JARRETT, et al.,

Defendants.

ORDER


Pending before the court is the defendants' Motion To Dismiss, or in the alternative, Motion for Summary Judgment [Docket 14] in petitioner's action based on 42 U.S.C. § 1983. This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court treat the defendants' motion as a motion for summary judgment and grant the motion [Docket 35].

Neither party has filed objections to the Magistrate Judge's findings.

Accordingly, the court accepts and incorporates the findings and recommendations of the Magistrate Judge and **GRANTS** the defendants' Motion for Summary Judgment, **DENIES AS MOOT** the defendants' Motion To Dismiss, and **DISMISSES** the case from the docket.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: October 4, 2005



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE